

Ocotillo Wind Energy Facility

Nesting Bird Mitigation and Monitoring Plan

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1.0 INTRODUCTION

This Nesting Bird Mitigation and Monitoring Plan (NBMMP) has been developed to describe nest monitoring and reporting requirements during the construction phase of the Ocotillo Wind Energy Facility (OWEF; project), as required by the Bureau of Land Management (BLM), California Department of Fish and Game (CDFG), and U.S. Fish and Wildlife Service (USFWS). This NBMMP describes the procedures that will be implemented if nests are observed within the 12,484-acre project area. This NBMMP is designed to fulfill Mitigation Measure Wild-2b in the Final Environmental Impact Statement/Final Environmental Impact Report (Final EIS/EIR) for the OWEF (BLM 2012) and to provide protection to nesting birds protected by California Fish and Game Code sections 3503.5 and 3511 and the federal Migratory Bird Treaty Act. The intent of this NBMMP is to outline methods for monitoring nesting birds and raptors before and during vegetation clearing and during other construction activities in order to protect them while allowing clearing and other construction to proceed during the breeding season (February 15 through September 1). Burrowing owls are discussed several times in this NBMMP, but a separate mitigation and monitoring plan has been prepared for burrowing owls for the OWEF project (HELIX 2012).

1.1 PROJECT DESCRIPTION

Pattern Energy Group, through Ocotillo Express LLC (OE LLC), proposes to construct, operate, maintain, and decommission up to a 315-megawatt (MW) wind energy facility within an approximately 12,484-acre area near the town of Ocotillo, Imperial County, California (Figures 1 and 2). Facilities for the OWEF would consist of 112 wind turbine generators (WTGs), above-ground and below-ground electrical transmission/collection systems for gathering the power generated by each WTG, an electrical substation, interconnection switchyard, access roads, up to 3 meteorological towers, a biological monitoring observation tower, and an operations and maintenance (O&M) building (Figure 3). The dimensions of proposed WTGs include a hub height of 262 feet and a rotor diameter of 331-371 feet. The expected operation life of the OWEF will be 30 years, consistent with the BLM right-of-way grant.

1.2 PROJECT LOCATION

The project is located almost entirely on public land managed by the BLM within 4 U.S. Geological Survey 7.5-minute quadrangle maps: Carrizo Mountain, Coyote Wells, In-Ko-Pah Gorge, and Painted Gorge (Figure 2). The northern portion of the project area (Site 1) is situated north of Interstate 8 (I-8), from the Imperial/San Diego County border on its western edge to approximately 1.5 miles northeast of the town of Ocotillo on its eastern edge. Site 1 includes several distinct features, including a portion of the I-8 Island, which is undeveloped rocky and hilly terrain between the eastbound and westbound lanes of I-8, Sugarloaf Mountain, and a portion of the San Diego and Arizona Eastern railroad tracks (Figure 2). County Route (CR) S2 bisects Site 1, and I-8 passes through the southern portion of Site 1. The southern area (Site 2) is much smaller than Site 1, and the majority is south of State Route (SR) 98 (herein project 'site' or 'area' will refer to both Sites 1 and 2). Anza-Borrego Desert State Park is to the west and the Jacumba Wilderness Area is to the south of the project area.

1.3 NESTING BIRDS IN THE PROJECT AREA

HELIX Environmental Planning, Inc. (HELIX) conducted avian surveys within the project area between September 2009 and August 2010 during both breeding and non-breeding seasons (HELIX 2010). Seventy-seven avian species were recorded during the avian point count surveys. In addition, HELIX performed 2 years of raptor migration studies between fall 2009 and spring 2011, and several additional avian species have been observed incidentally by biologists on the project site during other surveys. Of the more than 77 species seen on site, those that have the potential to nest in the project area will be the focus of this NBMMP (Table 1). Several of the avian species observed are special status species such as the burrowing owl, prairie falcon, and loggerhead shrike (BLM 2012). Table 1 includes any avian species that have a range in close proximity to the project site during the breeding season (Unitt 2004). There is the possibility that a species not listed in Table 1 could nest in the project area.

ORDER AND FAMILY	SCIENTIFIC NAME	COMMON NAME	SENSITIVITY STATUS*
Order Apodiformes			
Apodidae	<i>Aeronautes saxatalis</i>	White-throated swift	
Trochilidae	<i>Calypte anna</i>	Anna's hummingbird	
	<i>Calypte costae</i>	Costa's hummingbird	BCC
Order Caprimulgiformes			
Caprimulgidae	<i>Chordeiles acutipennis</i>	Lesser Nighthawk	
Order Columbiformes			
Columbidae	<i>Columba decaocto</i>	Eurasian collared-dove	
	<i>Columbina passerine</i>	Common Ground-dove	
	<i>Zenaida asiatica</i>	White-winged dove	
	<i>Zenaida macroura</i>	Mourning dove	
Order Cuculiformes			
Cuculidae	<i>Geococcyx californianus</i>	Greater roadrunner	
Order Falconiformes			
Accipitridae	<i>Buteo jamaicensis</i>	Red-tailed hawk	
Falconidae	<i>Falco mexicanus</i>	Prairie falcon	CSC; BCC
	<i>Falco sparverius</i>	American kestrel	
Order Passeriformes			
Alaudidae	<i>Eremophila alpestris</i>	Horned lark	
Corvidae	<i>Corvus corax</i>	Common raven	

Table 1 (cont.)
AVIAN SPECIES WITH POTENTIAL TO NEST IN THE OWEF PROJECT AREA

ORDER AND FAMILY	SCIENTIFIC NAME	COMMON NAME	SENSITIVITY STATUS
Order Passeriformes (cont.)			
Emberizidae	<i>Amphispiza bilineata</i>	Black-throated sparrow	
Fringillidae	<i>Carduelis psaltria</i>	Lesser goldfinch	
	<i>Carpodacus mexicanus</i>	House finch	
Icteridae	<i>Icterus parisorum</i>	Scott's oriole	
Laniidae	<i>Lanius ludovicianus</i>	Loggerhead shrike	CSC
Mimidae	<i>Mimus polyglottos</i>	Northern mockingbird	
	<i>Toxostoma lecontei</i>	Le Conte's thrasher	BCC
Ptilonotidae	<i>Phainopepla nitens</i>	Phainopepla	
Remizidae	<i>Auriparus flaviceps</i>	Verdin	
Sylviidae	<i>Polioptila melanura</i>	Black-tailed gnatcatcher	
	<i>Campylorhynchus brunneicapillus</i>	Cactus wren	
Tyrranidae	<i>Catherpes mexicanus</i>	Canyon wren	
	<i>Salpinctes obsoletus</i>	Rock wren	
	<i>Thryomanes bewickii</i>	Bewick's wren	
	<i>Sayornis saya</i>	Say's phoebe	
	<i>Tyrannus verticalis</i>	Western kingbird	
Order Piciformes			
Picidae	<i>Picoides scalaris</i>	Ladder-backed woodpecker	
Order Strigiformes			
Strigidae	<i>Athene cunicularia</i>	Burrowing owl	BSS; CSC; BCC
	<i>Bubo virginianus</i>	Great horned owl	
Tytonidae	<i>Tyto alba</i>	Barn owl	

*Sensitivity status codes: BSS – BLM Sensitive Species; CSC – California Species of Special Concern; BCC – USFWS Birds of Conservation Concern

2.0 PURPOSE AND GOALS OF THE NBMMP

The purpose of the NBMMP is to ensure that impacts to avian species protected by California Fish and Game Code sections 3503.5 and 3511 and the federal Migratory Bird Treaty Act are avoided during vegetation clearing and other construction activities. The construction of the OWEF will occur over a 9-12 month period and will occur during the avian breeding season (defined in the Final EIS/EIR as February 15 through September 1). The goals of the NBMMP are to: 1) locate avian nests, by following a nest survey protocol (Section 3), that could be impacted by vegetation clearing and other construction activities and 2) provide protection for nesting birds during vegetation clearing and other construction activities through the establishment of effective buffers around their nest sites. Effective buffers are those that minimize indirect impacts on nesting birds by providing a distance between the nest and construction activities, which may also minimize visual and sound disturbance to nesting birds.

3.0 NEST SURVEY PROTOCOL

This Nest Survey Protocol is intended to provide direction for OWEF vegetation clearing and other construction activities that need to occur during the general avian breeding season of February 15 through September 1 (in accordance with Mitigation Measure Wild-2b). The purpose of this Nest Survey Protocol is to maximize the potential that all avian nests will be identified and impacts to avian nesting avoided through implementation of the OWEF NBMMP.

Vegetation clearing at the OWEF could result in impacts to avian species protected by California Fish and Game Code sections 3503.5 and 3511 and the federal Migratory Bird Treaty Act. The removal of vegetation could cause destruction or abandonment of active nests or the mortality of adults, eggs, or nestlings.

Surveys for burrowing owl burrows will be conducted in accordance with the California Burrowing Owl Consortium (CBOC) Guidelines (1993) per Mitigation Measures Wild-11 and Wild-2a, and in accordance with the Burrowing Owl Mitigation and Monitoring Plan prepared for the OWEF project (HELIX 2012).

3.1 BIOLOGICAL MONITORS

3.1.1 Biological Monitor(s)

HELIX will serve as the Biological Monitor(s) who will be on site for the duration of the project to conduct preconstruction surveys and monitor ground disturbance, grading, construction, O&M, decommissioning, and restoration activities. They will also have the authority and responsibility to halt any proposed OWEF activities that are in violation of the measures in this MMP.

The Biological Monitor(s) will have the education and field experience to understand the entirety of the biological resources pertaining to the project. Specifically for nesting birds, the Biological Monitor(s) will understand avian biology, and be able to identify the bird species and nests that

have the potential to be found on site. To avoid and minimize effects to biological resources, including those directly related to nesting birds, the Biological Monitor(s) will perform the following:

- Attend all pre-construction meetings.
- Conduct the pre-construction Worker's Education Awareness Program (WEAP) Training.
- Conduct all pre-construction nesting bird surveys.
- Be present during vegetation clearing activities that take place in nesting bird habitat near identified nests to prevent or minimize harm or injury to birds.
- Stop and report any proposed OWEF activities that are in violation of mitigation measures and permit conditions.
- Confirm the accuracy of all setback distances implemented around active nests.
- Flag, stake, and/or otherwise mark appropriate setback distances from active nests.
- Provide Nest Survey Reports to the BLM and Designated Biologist.

3.1.2 Designated Biologist

The BLM's third-party construction compliance monitor (Dudek & Associates) will serve as the Designated Biologist for the project during the construction phase. The Designated Biologist will have the authority to ensure compliance with mitigation measures for nesting birds set forth in the Final EIS/EIR and will be the primary wildlife agency contact. In addition to the Biological Monitor(s), the Designated Biologist will have the authority and responsibility to halt any proposed OWEF activities that are in violation of mitigation measures. To avoid and minimize effects on nesting birds, the Designated Biologist will:

- Notify BLM's Authorized Officer and the USFWS at least 14 calendar days before the initiation of ground disturbing activities.
- Immediately notify BLM's Authorized Officer in writing if the Applicant does not comply with mitigation measures.
- Conduct regular compliance inspections during on-going construction as clearing, grubbing, and grading are completed, and submit a monthly compliance report to BLM's Authorized Officer until construction is complete.

3.2 SURVEY PROTOCOL

Surveys for avian nesting will be conducted as follows. There is no suitable nesting habitat on the OWEF site or in its immediate vicinity for state or federally listed avian species, therefore, they are not addressed.

Per Mitigation Measure Wild-2b, vegetation clearing will take place outside of the general avian breeding season (February 15 through September 1), when feasible. If vegetation clearing cannot occur outside the avian breeding season, a pre-vegetation clearing survey for avian nesting will be conducted.

Furthermore, if construction activity (including vegetation clearing) is to begin during the breeding season, or is to resume in an area where it has not occurred for a period of 7 or more days during the breeding season (including use of staging areas and/or project access roads), that area will be considered “inactive” and a survey for avian nesting will be conducted. In addition, construction equipment or materials are left uncovered for a period of 7 days or more, it will be inspected by a Biological Monitor for the presence of bird nests prior to moving the equipment.

These surveys are to locate avian nests and to ensure through implementation of the NBMMP that direct and indirect impacts to avian nesting protected by California Fish and Game Code sections 3503.5 and 3511 and the federal Migratory Bird Treaty Act do not occur.

3.2.1 General Survey Methods

Biological Monitors will conduct the pre-construction nesting bird and raptor surveys by following the measures described in the bullet points below. The methods will be based on the nest-finding techniques described in the “Handbook of Field Methods for Monitoring Landbirds” (Ralph et al., 1993). These commonly used techniques include: 1) visually inspecting vegetation, cliff ledges, and the ground, as appropriate, for nests; 2) inspecting existing nests for signs of use such as evidence of fresh building, presence of down, a completed nest bowl, eggs, and/or nestlings; 3) inspecting cavities for signs of use, such as down or whitewash on the rim of the cavity; 4) inspecting cavities (e.g., trees, cactus, and badlands) for signs of use and knocking on trees with cavities to prompt a behavioral response from birds within the tree; and 5) follow adult birds carrying nesting material/food and observe adults displaying territorial behavior. While these are commonly used techniques for finding nests, Biological Monitors will adjust the survey methods described below based on their experience and site conditions. The pre-construction survey methods for the OWEF project will include:

- The survey area will include the project footprint as well as 100 feet beyond. The survey area will also include searches in structures that have a potential to support nesting birds and raptors, such as the Sunrise Powerlink and Southwest Powerlink 500 kV transmission line towers.
- The surveys will be conducted a maximum of 7 days prior to any vegetation clearing by Biological Monitors. A concerted effort will be made to conduct pre-construction surveys within 2 to 3 days of vegetation clearing. Completed Nest Survey Reports (NSRs) will be submitted to the BLM and Designated Biologist.
- The surveys will begin with passive (silent) observation at stationary locations to detect avian species by sight and sound. Biological Monitors will document sign of potential breeding behavior and nesting activity, such as observations of birds carrying nesting material or food, and will note the locations of avian species observed or detected. Following the passive observation, the Biological Monitors will conduct an active survey for bird nests by walking meandering transects through the survey area. The spacing between biologists and distance between transects will be tailored to the site conditions (existing topography and vegetation density in the given survey area). Biological Monitors will inspect shrubs and cactus where birds were observed or detected during passive

observation. The Biological Monitors will determine the amount of time necessary to complete a thorough nesting survey to determine nesting status.

- A detailed description of the methods will be included in the NSRs. Each NSR will include the names of the Biological Monitors, date and time, weather conditions, methods for how the surveys were conducted, a list of avian species detected, and the results of avian nests documented during the survey. Appendix A provides an example format of the NSR to be used for this project.

3.2.2 Additional Survey Methods for Raptors and Owls

Mitigation Measure Wild-2b also requires a pre-construction survey for nesting raptors (and owl species) and requires a 500-foot construction setback for active raptor nests. These additional survey methods would be implemented when searching for raptor and owl nests:

- Biological Monitors will conduct surveys for raptor and owl nests concurrently with the surveys for nesting birds. Biologists will spend a minimum of one hour looking for signs of activity at potential raptor or owl nests. Biological Monitors will document courtship and breeding behavior as well as observations of raptors carrying nesting material. Additional observation time may be necessary if the Biological Monitor cannot make an initial determination of whether a raptor nest is active.
- Biological Monitors may use a spotting scope (in addition to binoculars and passive observation) as part of the raptor and owl nest surveys;
- A raptor and/or owl nest will be classified as in use once signs of activity are observed. Signs of activity include birds building a new nest or maintaining an existing nest, birds within a nest, breeding, or territorial behavior near a nest.

Biological Monitors will conduct searches for owl nests during the day to maximize the potential for locating potential nest sites and minimize the disturbance to diurnally active species. Owls typically use nests built by other species or re-use old nests, which has been noted by HELIX on this project site.

3.3 SURVEY CONDITIONS

The pre-construction surveys will be conducted in weather conditions conducive to visual and auditory detection of birds. Surveys will not be conducted under adverse weather conditions that would prevent the detection of nesting birds. Surveys will be conducted during the times of day that maximize detection of nesting birds, such as during early morning hours and late in the day closer to dusk. The Biological Monitor(s) will be responsible for determining if weather conditions are considered adverse for the detection of nesting birds. Examples of adverse weather conditions include extreme temperatures, sustained winds that exceed 20 miles per hour, or rain events.

After conducting the pre-construction surveys for the presence of avian nests, Biological Monitor(s) will determine whether the area met one of two conditions:

Condition 1 - 100 percent survey of the nesting status was possible, or
Condition 2 - More information, or an additional survey, is needed.

If it is determined that Condition 1 applies, vegetation clearing may commence subject to all applicable buffers identified in the NBMMP. If Condition 2 applies, an additional investigation will need to occur, and vegetation clearing cannot commence.

Once the surveys have been conducted, the Biological Monitor(s) will complete and submit the NSRs (Attachment A) to the BLM and Designated Biologist.

3.4 NEST MONITORING

Once a nest is found it must be monitored on a daily basis while construction activities are occurring within 200 feet of the nest (or 500 feet in the case for active raptor nests). The Biological Monitors will ensure that all buffers are adhered to by construction personnel. While monitoring the nest, any pertinent observations will be recorded to meet reporting objectives. Monitoring will be performed from outside the buffer using binoculars, whenever feasible, to minimize the disturbance experienced by nesting birds.

Monitoring of a nest will be discontinued once the chicks have fledged. This date should be recorded for reporting purposes. Other situations in which the monitoring of active nests will be discontinued include: if nest building ceases, parents do not use the nest, the eggs in the nest do not hatch after the incubation period is over and they are no longer viable, predation after which the nest no longer contains young, the nest is gone due to high winds, or other natural or anthropogenic causes.

The following best management practices will be incorporated into the nest monitoring surveys in order to minimize conspicuousness of observers and nests to predators during searching and monitoring:

- Nest monitoring will be conducted using binoculars and spotting scopes whenever possible to avoid drawing attention to a nest and to avoid flushing the adult off the nest;
- Before approaching a nest, the biologist will evaluate whether the adult is sitting on the nest and will work to avoid startling and/or flushing the adult off the nest;
- Visits to a nest will be brief (approximately 1 minute or less);
- Nests and/or eggs will not be handled to avoid leaving a human scent;
- Vegetation will not be damaged or trampled in order to inspect nests;
- Biologists will not leave a trail to the nest and will avoid using shiny objects when inspecting a nest;
- Biologists will inspect other shrubs and/or cactus in the vicinity (without nests) in order to not draw attention to the area where the nest is located;
- Biologists will not use the same path to enter and exit the area; and
- Biologists will write their field notes before or after inspecting the nest rather than at the nest site.

4.0 NEST MANAGEMENT

When a nest is found, the protocol outlined below will be implemented to protect nesting birds from being impacted by vegetation clearing activities. A buffer will be established around all nests within the survey area (200 feet for passerines or 500 feet for raptor species [except burrowing owls]) where vegetation clearing and construction occurs during the breeding season. Biologists will create the buffer using flagging to establish a circular off limits area around the nest. Distance from construction, vegetation present on site that will serve as a screen, the needs and habits of the species associated with the nest, as well as the species in question and its status, will all be considered when determining buffer distance.

4.1 RAPTOR AND OWL BUFFERS

Raptors and owls will be given a buffer of 500 feet between their nests and any vegetation clearing activity (BLM 2012). A 500-foot buffer for raptor nests has been used on several projects in the past (BonTerra Consulting 2008; Bureau of Indian Affairs 2010; Rincon 2010; San Diego Gas and Electric and Chambers Group, Inc. 2012). A 500 foot buffer will not be used for burrowing owls. The burrowing owl buffer is discussed in a separate mitigation and monitoring plan (HELIX 2012).

4.2 PASSERINE AND OTHER NON-RAPTOR BUFFERS

Passerines and other non-raptor species will be given a buffer of 200 feet to protect their nest from vegetation clearing and construction activities.

Cavity nesting birds are those that utilize holes for laying eggs and raising their young. Cavities selected are often in the trunks of trees or inside buildings. In a desert environment, such as the OWEF site, there are few nesting opportunities for cavity nesters. One example is natural cavities eroded into the sides of washes. Some of the species recorded on site that are considered crevice or cavity nesting birds include the ladder-backed woodpecker, rock wren, and Bewick's wren (USDA 1977). Loggerhead shrikes are also known to nest in cavities created in ocotillo. Nests in crevices or cavities will be given a 200 foot buffer. Cavity nesting raptors (e.g., American kestrel) will be given a 500-foot buffer as described in Section 4.1.

4.3 BUFFER ADJUSTMENTS

Buffers may be increased or decreased in certain situations, as long as they remain effective and serve to minimize impacts on nesting birds. Factors to take into account when considering adjusting a buffer include species status, nest location, disturbance tolerance of the species in question, habitat, topography, stage of the nest, and behavior of the bird in question. Disturbance considerations include whether the nest will be directly impacted by vegetation clearing. Any reductions to nest buffer distances must be submitted by the Biological Monitor(s) to the Designated Biologist who will submit the request in writing to the BLM in the form of a Nest Buffer Justification. Any increases in the nest buffer distances will be implemented immediately by the Biological Monitor(s) and will be reported in the weekly nest log. Nest Buffer Justifications will include the following information:

- Date and time of the survey.
- Requester's name and contact information.
- Species of bird in question.
- Buffer distance requested.
- Descriptions of construction activity in the vicinity.
- Justification for request of an alternate buffer.
- Description of pertinent field observations.

Requests will be reviewed on a case by case basis, and the BLM will respond to the request within 24 hours. If no response is received within the allotted time, the biologist will make a decision based on field observations and bird behavior, and report the size of the implemented buffer to the BLM within 24 hours. If any additional information is requested from the BLM, the Biological Monitor will provide it within 24 hours.

5.0 REPORTING

OE LLC will be responsible for maintaining a regular reporting program to the BLM as part of this NBMMP. The reporting program will include daily updates to construction personnel as new active nests are documented within the survey areas, submittal of a weekly nest log, and submittal of annual report following the end of the nesting season.

5.1 DAILY UPDATES

The Biological Monitors will communicate with the construction contractor on a daily basis alerting them of any new nests and associated buffers. Daily updates will include the location of the active nests relative to the closest project feature, buffer distance, and type of flagging used to delineate the buffer. The Biological Monitors will also communicate to the construction contractor when existing buffers are removed. The Biological Monitor will include the Designated Biologist on daily updates to the construction contractor.

5.2 NEST LOG

The Biological Monitor will submit a nest log to the Designated Biologist on a weekly basis. The nest log will be a spreadsheet containing information on each of the nests documented during pre-construction surveys. At a minimum, the nest log will include the following:

- Unique identification number for each nest;
- Date of discovery;
- Location of the nest and species of plant or substrate it is found in;
- The species of bird each nest belongs to;
- What stage the nest is in (being built, nest with eggs, nest with chicks, etc);
- Buffer distance;
- A description of the construction activity in the vicinity and its distance to the nest;

- The date the nest is no longer used and why;
- Any incidental observations made by the biologist.

The Designated Biologist will request additional information from the Biological Monitors, if necessary. The Designated Biologist will submit the nest log weekly to the BLM, USFWS, and CDFG.

5.3 ANNUAL MONITORING REPORT

Following the completion of the avian nesting season, the Biological Monitor will provide an annual summary of the methods and results of the NBMMP for that nesting season. The report will be submitted to the Designated Biologist, and the Designated Biologist will be responsible for submitting the report to the BLM, USFWS, and CDFG.

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Appendix A

NEST SURVEY REPORT



Appendix A
NEST SURVEY REPORT

Date:

Avian Biologists:

Survey Area:

Environmental Data:

Survey Start and End Times:

Beginning and End Temperatures:

Beginning and End Wind Speeds:

Description of Precipitation:

Descriptions of Potential Nesting Areas (e.g., vegetation, cavities, structures, etc.):

Survey Methods (including any specific to this survey):

Survey Condition Determination:

- 1) 100 percent survey of the nesting status was possible, or
- 2) More information, or an additional survey, is needed.

Survey Condition Determination Justification:

List of All Avian Species Observed:

Also describe behaviors observed for those species with potential to breed in the survey area (if not described in Detailed Notes below). If they were only observed or detected outside of their survey area (e.g., if a LOSH was only observed/detected more than 200 feet beyond the vegetation to be cleared), then state this.

Detailed Notes

Item Carry:

Agitated/Territorial Behavior:

Courtship Behavior:

Pairs Observed:

Survey Results

New Nest(s) Found:

Nest Identification Number/Location	Species	Nest Stage	Observations